AN ACT REVISING OCCUPATIONAL HEALTH AND SAFETY REGULATIONS; REPEALING THE OCCUPATIONAL HEALTH ACT OF MONTANA AND PARTS OF THE MONTANA SAFETY ACT AND REPLACING THEM WITH THE MONTANA OCCUPATIONAL SAFETY AND HEALTH ACT; LIMITING APPLICABILITY AND ENFORCEMENT OF CERTAIN PROVISIONS TO PUBLIC SECTOR EMPLOYERS AND EMPLOYEES; PROVIDING DUTIES FOR PUBLIC SECTOR EMPLOYERS AND EMPLOYEES; PROVIDING FOR STOP-WORK ORDERS, INJUNCTIONS, AND PENALTIES; PROVIDING FOR SAFETY CONSULTATIONS; PROHIBITING RETALIATION; REVISING COAL MINE INSPECTION STATUTES; PROVIDING PENALTIES; AMENDING SECTIONS 20-15-403, 39-71-201, 39-71-1503, 50-71-102, 50-73-102, 50-73-402, 50-73-406, AND 50-73-409, MCA; REPEALING SECTIONS 50-70-101, 50-70-102, 50-70-103, 50-70-104, 50-70-105, 50-70-107, 50-70-108, 50-70-109, 50-70-111, 50-70-112, 50-70-113, 50-70-114, 50-70-115, 50-70-116, 50-70-117, 50-70-118, 50-71-101, 50-71-103, 50-71-104, 50-71-105, 50-71-106, 50-71-107, 50-71-108, 50-71-109, 50-71-110, 50-71-301, 50-71-302, 50-71-303, 50-71-311, 50-71-312, 50-71-313, 50-71-314, 50-71-315, 50-71-316, 50-71-321, 50-71-322, 50-71-323, 50-71-324, 50-71-325, 50-71-326, 50-71-327, 50-71-331, 50-71-332, 50-71-333, AND 50-71-334, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montana's general occupational safety act, the Montana Safety Act, was enacted in 1969, prior to the adoption of the federal Occupational Safety and Health Act of 1970; and

WHEREAS, as a result of the enactment of the federal Occupational Safety and Health Act of 1970, federal law has become the basis for occupational safety and health regulation in the private sector; and

WHEREAS, states have responsibility for nonfederal public sector compliance with occupational safety and health regulations; and

WHEREAS, since the creation of the federal Occupational Safety and Health Administration, the Montana Safety Act and the Occupational Health Act of Montana do not reflect the reality of federal occupational safety and health regulation and enforcement in Montana's private sector; and

WHEREAS, the Montana Safety Act contains various archaic rulemaking and hearings provisions

because it was enacted prior to the adoption of the Montana Administrative Procedure Act; and

WHEREAS, the Occupational Health Act of Montana, enacted in 1971, suffers from many of the same jurisdictional and procedural flaws as does the Montana Safety Act; and

WHEREAS, it is appropriate to modernize Montana's occupational safety and health laws for occupations other than those in mining and consolidate them into a unified body of law that reflects the scope of state regulation of general occupational safety and health matters as limited to public sector employment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 13] may be cited as the "Montana Occupational Safety and Health Act".

Section 2. Definitions. As used in [sections 1 through 13], the following definitions apply:

(1) "Department" means the department of labor and industry provided for in 2-15-1701.

(2) "Employee" has the meaning provided in 39-71-118.

(3) "Employer" has the meaning provided in 39-71-117.

(4) "Health" means protection against occupational illness.

(5) "Inspection" means an onsite review of a workplace by the department to determine compliance with standards adopted under [sections 1 through 13].

(6) "Private sector employer" means any employer that is not a public sector employer. The term includes for-profit and not-for-profit employers.

(7) (a) "Public sector employee" means an employee of a public sector employer.

(b) The term does not include a contractor.

(8) "Public sector employer" means:

(a) a state agency;

(b) each county in the state;

(c) each municipality in the state;

(d) each school district or community college; and

(e) any other political subdivision of the state.

(9) "Safety" means protection against occupational injury or death.

(10) "Safety consultation services" has the meaning provided in 39-71-1503.

(11) "Standard" means a rule adopted by the department pursuant to [sections 1 through 13] that is designed to promote or ensure safety or health in the workplace.

(12) "State agency" means any branch of government, including a department, board, commission, office, bureau, institution, university system entity, or unit of state government recognized in the state budget.

(13) "Workplace" means any site or location where an employee performs work for the employee's employer.

Section 3. Administrative authority -- funding. (1) The department has authority to administer the provisions of [sections 1 through 13].

(2) In addition to administering the provisions of [sections 1 through 13], the department may:

(a) promote occupational safety and health;

(b) educate employers and employees in occupational safety and health matters;

(c) conduct research regarding occupational safety and health data, topics, and techniques; and

(d) investigate occupational injuries, illnesses, and deaths involving public sector employees.

(3) The department may develop and operate a statewide employment safety program. The statewide employment safety program may include but is not limited to:

(a) a safety awareness component;

(b) an employee education component;

(c) an employer education component; and

(d) industry-specific initiatives.

(4) The activities of the department under the provisions of [sections 1 through 13] are funded by the workers' compensation administration fund provided in 39-71-201.

(5) The department may accept, receive, and administer gifts, grants, or other funds from public or private agencies and from the United States for the purpose of carrying out the provisions of [sections 1 through 13]. Funds received by the department under this subsection (5) must be deposited into the fund provided for in 39-71-201.

Section 4. Rulemaking -- variances. (1) The department may adopt appropriate standards for safety and health by administrative rule, including:

(a) any safety or health regulations promulgated by the federal occupational safety and health administration; and

(b) standards that are not inconsistent with federal safety and health regulation but that provide for a greater level of protection for employees.

(2) The department may adopt other rules that are reasonably necessary to implement [sections 1 through 13].

(3) (a) The department may by rule:

(i) provide a procedure to grant a temporary variance from the particular provisions of a standard; and

(ii) permit the temporary use of other or different devices or methods than provided by the standard.

(b) A temporary variance may be granted only if the public sector employer:

(i) has an effective program for complying with the standard as quickly as is practicable;

(ii) is taking all available steps to safeguard public sector employees against the hazards covered by the standard; and

(iii) is unable to comply with the standard because:

(A) professional or technical personnel needed to implement compliance with the standard are temporarily unavailable;

(B) material or equipment needed to comply with the standard is temporarily unavailable; or

(C) necessary construction or alteration of facilities cannot be completed by the effective date of the standard.

Section 5. Applicability of standards -- exceptions. (1) The standards for safety and health and the enforcement rules adopted pursuant to [sections 1 through 13] apply to all public sector employers in this state and to public sector employees.

(2) The standards and enforcement rules adopted pursuant to [sections 1 through 13] do not apply to employment by:

(a) private sector employers;

(b) the federal government and its instrumentalities;

(c) a federally recognized tribal government; or

(d) a tribal government recognized by the state.

Section 6. Duties of public sector employers and public sector employees. (1) Each public sector employer shall:

(a) furnish a place of employment that is free from recognized hazards that cause or are likely to cause death or serious physical harm to public sector employees;

(b) adopt and use practices, means, methods, operations, and processes that are adequate to render the workplace safe; and

(c) take appropriate actions necessary to protect the life, health, and safety of public sector employees.

(2) Each public sector employee shall comply with the safety and health standards, rules, and orders issued pursuant to [sections 1 through 13] as they apply to the public sector employee's own actions and conduct.

Section 7. Public sector employer records and reports. (1) Each public sector employer shall maintain records of occupational injuries, illnesses, and deaths as the department may require by rule.

(2) The department may inspect those records or require that the public sector employer submit those records to the department for its review.

(3) Except as otherwise provided by rule, a public sector employer complies with the requirements of this section if the public sector employer completes and submits a first report of injury form to the department or to the public sector employer's worker's compensation insurer within 30 days of the public sector employer becoming aware of an occupational injury, illness, or death suffered by a public sector employee.

Section 8. Inspections. (1) The department may inspect all workplaces of any public sector employer for the purpose of determining whether the public sector employer is in compliance with the safety and health standards that apply to the employer and the employer's workplaces. A department employee conducting an inspection shall, upon request, present appropriate credentials to the public sector employer. The department shall invite a representative of the public sector employer and a representative of any labor organization that represents employees of the public sector employer who are working at the workplace that is to be inspected to accompany the department employee on the inspection. The labor organization representative must be on paid

status while accompanying the department employee on the inspection.

(2) An inspection may be performed:

(a) periodically without prior notice or scheduling;

(b) at the request of the public sector employer;

(c) as the result of a complaint of a violation of a safety or health standard at a public sector employer's workplace;

(d) as part of a department investigation following a report of an occupational injury, illness, or death; or

(e) following the issuance of a citation, after the public sector employer has been given a reasonable opportunity to correct any violation of standards.

(3) A public sector employer may not interfere with a department inspection conducted pursuant to this section.

(4) The department may not unreasonably interfere with the operations of a public sector employer while conducting an inspection. An unscheduled inspection does not constitute unreasonable interference with the public sector employer's operations.

Section 9. Report of inspection -- violations -- penalty -- appeal process. (1) (a) The department shall make a written report of each inspection that it conducts under [section 8].

(b) The inspection report must include a list of violations of standards that the inspector discovered during the inspection. A violation of a standard by a public sector employee is attributable to the public sector employer for the purposes of [sections 1 through 13].

(c) The department shall provide a copy of the inspection report to the public sector employer and to a representative of a labor organization that represents public sector employees at the workplace that was inspected.

(d) The public sector employer shall post a copy of the list of hazards included in the inspection report at one or more visible locations at the workplace that is the subject of the inspection report. The posting must be in a location likely to be seen by employees at that workplace.

(2) The department may issue a written citation to the public sector employer for a violation of a standard. The citation must specify:

(a) the nature of the violation;

(b) the standard that was violated; and

(c) a timeframe within which the public sector employer is required to correct the violation.

(3) (a) The department may impose upon a public sector employer a monetary penalty of not more than $1,000 for each violation for which a citation has been issued.

(b) The department may, in its sole discretion, waive or reduce a penalty under this subsection (3) if the public sector employer timely corrects or cures the violation for which the penalty was imposed.

(c) Monetary penalties collected pursuant to this subsection (3) must be deposited into the workers' compensation administration fund provided for in 39-71-201.

(4) (a) A public sector employer may appeal a citation or a penalty.

(b) An appeal to the department must be in writing and made within 30 days of the issuance of the citation.

(c) The appeal of a citation or a penalty is conducted as a contested case under Title 2, chapter 4.

Section 10. Stop-work orders. (1) The department may order a public sector employer to immediately and temporarily stop work at a particular workplace if a department inspector who has personally observed the workplace and the hazards that are present determines that:

(a) the conditions or operations that are present at the workplace constitute a violation of a standard established by the department;

(b) the violation poses an immediate and substantial risk of serious bodily injury or death to a public sector employee or a member of the public; and

(c) the public sector employer or a public sector employee who is present at the workplace is unable or unwilling to:

(i) immediately correct the violation; or

(ii) suspend the unsafe operation until the violation is corrected.

(2) The temporary stop-work order must be in writing and specify:

(a) the location of the workplace;

(b) the specific standard that is being violated;

(c) the nature of the risk posed by the violation;

(d) the date and the time that the temporary stop-work order is issued; and

(e) the name, employment address, and work telephone number of the person issuing the temporary stop-work order.

(3) The temporary stop-work order is effective upon communication or delivery to any one of the following:

(a) the public sector employer's onsite supervisor at the workplace;

(b) the public sector employer's manager in charge of workplace operations; or

(c) the chief executive of the public sector employer.

(4) A copy of the temporary stop-work order must be promptly posted by the department at the workplace. A posted temporary stop-work order may not be removed by any person while it is in effect.

(5) A temporary stop-work order is effective for 72 hours unless:

(a) the violation is corrected to the satisfaction of the department; or

(b) the temporary stop-work order is stayed by order of a district court judge following actual notice to the department and the public sector employer.

(6) The violation of a temporary stop-work order or the unauthorized removal of a posted copy of a temporary stop-work order is punishable as a contempt of court.

(7) As used in this section, the term "serious bodily injury" has the same meaning as provided in 45-2-101.

Section 11. Injunctive relief. In addition to any remedies available under [sections 1 through 13], the department may institute and maintain in the name of the state an action for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain a public sector employer and public sector employees from engaging in any activity for which the department has issued a temporary stop-work order pursuant to [section 10];

(2) enjoin a violation of [sections 1 through 13];

(3) enjoin a violation of a rule, including a safety or health standard, adopted under [sections 1 through 13]; or

(4) require compliance with [sections 1 through 13], including compliance with any rules adopted under [sections 1 through 13].

Section 12. Safety consultation services. The department may, in its sole discretion, provide onsite safety consultation services to public sector employers and private sector employers that request onsite safety consultation services.

Section 13. Retaliation prohibited. A public sector employer may not retaliate against a public sector employee who:

(1) contacts the department with a complaint of a violation of a standard in the workplace;

(2) cooperates with the department in the performance of an inspection or an investigation; or

(3) testifies or cooperates with the department in any case arising out of:

(a) an inspection;

(b) an investigation;

(c) a citation;

(d) a temporary stop-work order; or

(e) a civil action seeking injunctive relief.

Section 14. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 49-3-101, 49-3-102, [section 2], 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 15. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act and the statutory occupational safety and health acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

(a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; ~~and~~

(b) all penalties assessed under [section 9]; and

~~(b)~~(c) all fees paid by an assessment of 3% of paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon

paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or $500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium

surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) On or before April 30 of each year, upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of $500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of $500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration fund must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 16. Section 39-71-1503, MCA, is amended to read:

"39-71-1503. Safety consultation. (1) As used in this part, "safety consultation services" means assistance rendered by an insurer or the department to advise and aid an ~~insured~~ employer in the identification,

evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, electronically, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to an ~~insured~~ employer, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) education and training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise ~~insured~~ employers relative to risk, exposure, and experience in the ~~insured~~ employer's business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures."

Section 17. Section 50-71-102, MCA, is amended to read:

"50-71-102. Definitions. Unless the context requires otherwise, in this ~~chapter~~ part, the following definitions apply:

~~(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.~~

~~(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the department under the provisions of this chapter.~~

~~(3) "Department" means the department of labor and industry.~~

~~(4)~~(1) "Employee" and "worker" ~~are defined as~~ have the meanings provided in 39-71-118.

~~(5)~~(2) "Employer" ~~is defined as~~ has the meaning provided in 39-71-117.

~~(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.~~"

Section 18. Section 50-73-102, MCA, is amended to read:

"50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of labor and industry and the state coal mine inspectors employed by the department.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

~~(3) "Gassy mine" means a mine is considered to be potentially gassy. The department may further define this term in its rules.~~

~~(4)~~(3) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management ~~which~~ that contribute, directly or indirectly, to the mining or handling of coal.

~~(5)~~(4) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter ~~it~~ the mine and who is commonly known as the "fire boss".

~~(6)~~(5) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

~~(7)~~(6) "Operator", as applied to the ~~party~~ entity in control of a mine under this chapter, means the person, firm, or body corporate ~~which~~ that is the immediate proprietor as owner or lessee of the ~~plant~~ mine and, as such, is responsible for the condition and management ~~thereof~~ of the mine.

~~(8)~~(7) "Shaft" means any vertical opening through the strata ~~which~~ that is or may be used for the purpose of ventilation or escape or for hoisting or lowering of ~~men~~ workers or material in connection with the mining of coal.

~~(9)~~(8) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

(9) "Written inspection report" means a report prepared by the department identifying safety and health hazards noted during a mine inspection. The term includes any citation or order issued by the department that refers to a violation of safety or health standards at the mine."

Section 19. Section 50-73-402, MCA, is amended to read:

"50-73-402. Department authorized to enter and inspect coal mines. (1) The department may enter,

inspect, and examine any coal mine or any shaft, drift, or slope in the process of sinking for the purpose of mining coal in this state and the workings and the machinery belonging ~~thereto~~ to the coal mine at all reasonable times either by day or night~~, but not so as to~~. The department's entry, inspection, or examination under this subsection may not impede or obstruct the workings of the mine.

(2) The department may at any time perform ~~such~~ inspections and investigations ~~as it~~ that the department considers necessary in surface and underground mines ~~which are~~ subject to this chapter: ~~for the purpose of obtaining, utilizing, and disseminating~~

(a) to obtain, use, and disseminate information relating to health and safety conditions in the mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating ~~therein~~ in the mine; and ~~for the purpose of determining whether there is~~

(b) to determine compliance with a health and safety standard or order issued under this chapter.

(3) ~~For the purpose of making an inspection or investigation authorized by this chapter, representatives of the~~ The department may enter, upon or through, any mine ~~which is~~ subject to this chapter to conduct an inspection or investigation.

(4) The department shall prepare a written report for every inspection or investigation conducted under 50-73-406 and this section, noting the time and the material circumstances of the inspection or investigation."

Section 20. Section 50-73-406, MCA, is amended to read:

"50-73-406. Minimum inspection intervals. The department shall carefully examine all the coal mines in operation in this state at least ~~every 3 months~~ quarterly and more often if necessary to see that every precaution is taken to ~~insure~~ ensure the safety of all workers that may be ~~engaged~~ working in the coal mine. ~~The department shall make a record of the visit, noting the time and the material circumstances of the inspection.~~"

Section 21. Section 50-73-409, MCA, is amended to read:

"50-73-409. ~~Department~~ Operator to post statement of conditions ~~at some conspicuous location~~. (1) The ~~department~~ operator shall post ~~in some conspicuous location~~ the department's written inspection report at each mine visited and inspected by ~~it a plain statement of the conditions of the mine showing what in its judgment is necessary for the better protection of the lives and health of persons employed in the mine~~ the department.

(2) The ~~statement~~ written inspection report, signed by the department inspector, ~~shall give~~ must include the date of inspection and be posted in one or more conspicuous locations and remain posted until replaced by a subsequent inspection report. For the purposes of this subsection, a conspicuous location is one where the written inspection report:

(a) is likely to be seen by the mine workers; and

(b) is available to be read by any interested mine worker. ~~Where a local union has jurisdiction over the mine inspected, the department shall post three copies of the statement of conditions within 1 week after making the inspection. It~~

(3) The operator shall promptly provide a copy of the written inspection report to each exclusive representative of mine workers who are or may be affected by the conditions in the written inspection report.

(4) The operator shall also post a ~~copy~~ notice at the landing used by the workers stating what number of workers may be permitted to ride on the cage~~,~~ or car~~, or cars~~ at one time."

Section 22. Repealer. Sections 50-70-101, 50-70-102, 50-70-103, 50-70-104, 50-70-105, 50-70-107, 50-70-108, 50-70-109, 50-70-111, 50-70-112, 50-70-113, 50-70-114, 50-70-115, 50-70-116, 50-70-117, 50-70-118, 50-71-101, 50-71-103, 50-71-104, 50-71-105, 50-71-106, 50-71-107, 50-71-108, 50-71-109, 50-71-110, 50-71-301, 50-71-302, 50-71-303, 50-71-311, 50-71-312, 50-71-313, 50-71-314, 50-71-315, 50-71-316, 50-71-321, 50-71-322, 50-71-323, 50-71-324, 50-71-325, 50-71-326, 50-71-327, 50-71-331, 50-71-332, 50-71-333, and 50-71-334, MCA, are repealed.

Section 23. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 24. Codification instruction -- directions to code commissioner. (1) [Sections 1 through 13] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 13].

(2) Section 50-71-102 is intended to be renumbered and codified as an integral part of Title 50, chapter 71, part 2.

Section 25. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 26. Effective date. [This act] is effective July 1, 2009.

- END -

I hereby certify that the within bill,

HB 0138, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____ day

of _____, 2009.

_____

President of the Senate

Signed this _____ day

of _____, 2009.

HOUSE BILL NO. 138

INTRODUCED BY C. HUNTER

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

AN ACT REVISING OCCUPATIONAL HEALTH AND SAFETY REGULATIONS; REPEALING THE OCCUPATIONAL HEALTH ACT OF MONTANA AND PARTS OF THE MONTANA SAFETY ACT AND REPLACING THEM WITH THE MONTANA OCCUPATIONAL SAFETY AND HEALTH ACT; LIMITING APPLICABILITY AND ENFORCEMENT OF CERTAIN PROVISIONS TO PUBLIC SECTOR EMPLOYERS AND EMPLOYEES; PROVIDING DUTIES FOR PUBLIC SECTOR EMPLOYERS AND EMPLOYEES; PROVIDING FOR STOP-WORK ORDERS, INJUNCTIONS, AND PENALTIES; PROVIDING FOR SAFETY CONSULTATIONS; PROHIBITING RETALIATION; REVISING COAL MINE INSPECTION STATUTES; PROVIDING PENALTIES; AMENDING SECTIONS 20-15-403, 39-71-201, 39-71-1503, 50-71-102, 50-73-102, 50-73-402, 50-73-406, AND 50-73-409, MCA; REPEALING SECTIONS 50-70-101, 50-70-102, 50-70-103, 50-70-104, 50-70-105, 50-70-107, 50-70-108, 50-70-109, 50-70-111, 50-70-112, 50-70-113, 50-70-114, 50-70-115, 50-70-116, 50-70-117, 50-70-118, 50-71-101, 50-71-103, 50-71-104, 50-71-105, 50-71-106, 50-71-107, 50-71-108, 50-71-109, 50-71-110, 50-71-301, 50-71-302, 50-71-303, 50-71-311, 50-71-312, 50-71-313, 50-71-314, 50-71-315, 50-71-316, 50-71-321, 50-71-322, 50-71-323, 50-71-324, 50-71-325, 50-71-326, 50-71-327, 50-71-331, 50-71-332, 50-71-333, AND 50-71-334, MCA; AND PROVIDING AN EFFECTIVE DATE.